

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Global Plus 2C Contracts (MC2012-5)
Negotiated Service Agreements

Docket No. CP2013-42

PUBLIC REPRESENTATIVE COMMENTS ON POSTAL SERVICE
NOTICE OF FILING FUNCTIONALLY EQUIVALENT GLOBAL PLUS 2C CONTRACT
NEGOTIATED SERVICE AGREEMENT AND APPLICATION FOR NON-PUBLIC
TREATMENT OF MATERIALS FILED UNDER SEAL

(January 24, 2013)

The Public Representative hereby provides comments pursuant to Order No. 1623.¹ In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service Notice of its entering into an additional Global Plus 2C Negotiated Service Agreement.² Global Plus 2C Negotiated Service Agreements include prices not of general applicability between the Postal Service and Postal Qualified Wholesalers (PQW) that offer mailing service to end users for shipping articles via Global Direct and/or International Business Reply Service. Prices offered under the contracts may differ depending on the volume or postage commitments made by the customers. Prices also may differ depending upon when the agreement is signed, due to the incorporation of updated costing information. Notice at 5. The Postal Service seeks to add the Global Plus 2C Negotiated Service Agreement (contract) that is the

¹ PRC Notice and Order Concerning An Additional Global Plus 2C Contract (Contract), January 15, 2013.

² Notice of the United States Postal Service of Filing A Functionally Equivalent Global Plus 2C Contract Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, January 11, 2013, (Notice).

subject of its Notice to the competitive productive list, asserting that it is functionally equivalent to the baseline agreements in CP2012-10 and CP2012-11. *Id.* at 3. It further asserts that the contract is in compliance with 39 U.S.C. §3633 and therefore should be added to the competitive products list as part of the Global plus 2C product grouping. *Id.* at 8.

The Postal Service intends the effective date of the contract to be 12:01 a.m. on January 14, 2013. It would remain in effect until 11:59 p.m. on the date prior to the date in January 2014 when Canada Post Corporation institutes price changes for its domestic Lettermail, Incentive Lettermail, Admail, and/or Publications Mail products. Should Canada Post Corporation not change prices for these products during January 2014, the agreement shall terminate at 11:59 pm on January 31, 2014. *Id.* at 3 and 4.

BACKGROUND

Prices and classifications not of general applicability for Global Plus 2 Contracts were previously established by the Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Global Direct, Global Bulk Economy, and Global Plus Contracts, issued on July 16, 2008 (Governors' Decision No. 08-10). Subsequently, the Postal Regulatory Commission (Commission) determined that the Global Plus 2 contracts filed in Docket Nos. CP2008-16 and CP2208-17, and the Global Plus 2 contracts filed in Docket Nos. CP2009-48 and CP2009-49, were functionally equivalent to each other and included them within the Global Plus 2 product on the competitive products list. The Commission added the contracts filed in Docket Nos. CP2012-10 and CO2012-11 to the competitive product list

as a new product, Global Plus 2C. The contracts filed in the latter dockets serve as the baseline agreements for comparison of potentially functionally equivalent agreements under the Global Plus 2C grouping. The Commission determined that individual Global Plus 2C contracts may be included as part of the Global Plus 2C product if they meet the requirements of 39 U.S.C §3633 and if they are functionally equivalent to the previously submitted Global Plus 2C contracts.

COMMENTS

PRC Order No. 1623 seeks comments on whether the contract is consistent with the requirements of 39 CFR §3015.5 and the policies of sections 3632, 3633, and 3642. The Public Representative has reviewed the Postal Service's Notice, the Global Plus 2C Negotiated Service Agreement filed under seal, the supporting financial model also filed under seal, and all other materials filed with the Notice. The Public Representative has also carefully reviewed previous filings and Orders related to this Notice as well as the provisions of 39 U.S.C. §3633 and the baseline agreements in CP2012-10 and CP2012-11.

Functional Equivalency. The Postal Service contends that the instant contract is functionally equivalent to the baseline contracts in Dockets CP2012-10 and CP2012-11 in that they share similar cost and market characteristics. *Id.* at 4. The Postal Service, however, does identify a number of differences between the instant contract and the baseline contract, but does not consider them to affect either “the fundamental service the Postal Service is offering or the fundamental structure of the contract.” *Id.* at 7.

The Public Representative has carefully reviewed the Global Plus 2C contract that is the subject of Docket CP2012-42 and the baseline contracts in CP2012-10 and CP2012-11 and considers that they are functionally equivalent. Differences between the contracts do not impact any cost or market characteristics that would differentiate the contracts at any substantive level.

Statutory Criteria. 39 U.S.C. §3632. Section §3632 of Title 39 grants authority to the Postal Service's Board of Governors to establish rates and classes for products in the competitive category of mail in accordance with the requirements of the subchapter and regulations promulgated under section 3633. It further provides procedures for the establishment of such rates and classifications. The Public Representative finds the Notice and attachments consistent with 39 U.S.C. §3632.

39 U.S.C. §3633. The Postal Service also asserts that the instant contract meets the requirements of 39 U.S.C §3633 (a) that apply to competitive products. *Id.* at 8. The three relevant criteria are that competitive products are not cross-subsidized by market dominant products; cover their attributable costs; and should contribute to the Postal Service's institutional costs.

The Public Representative has reviewed the financial documentation filed under seal with the Commission and agrees that all three criteria under 39 U.S.C. §3633 are met under this contract *using the financial data provided*. There is a strong concern, however, with the Postal Service's use of cost and volume data from the FY2011 International Costs and Revenue Analysis (ICRA), despite the fact that analogous data was available from the FY2012 ICRA when the contract was filed with the Commission

on January 11, 2013. The FY2012 ICRA was filed with the Commission as part of the Postal Service's Annual Compliance Report on December 29, 2012. It seems more logical and appropriate to use cost and volume data from the FY2012 ICRA to determine cost coverage calculations for this contract.

The Public Representative therefore urges the Commission to consider use of more updated data from the FY2012 ICRA so that cost coverage estimates will be more accurate. Furthermore, by using FY2012 cost and volume data for this calendar year 2013 contract, the underlying data will only outdated by one year rather than two years. While a fair cost and exchange rate contingency were used in the calculations, the most up-to-date data should be used, when available. The Public Representative is unable to determine whether the contract meets the requirements of 39 U.S.C. §3633 without an update to the financial work papers from the Postal Service that includes all relevant FY2012 data from the FY2012 ICRA.

39 U.S.C. 3642. Section 3642 allows the Commission to make changes to the market dominant and competitive product lists upon request by the Postal Service, provides criteria for such changes, as well and notification and publication requirements. The Public Representative finds that the Postal Service's Notice and attachments meet the criteria of 39 U.S.C. §3642.

The Public Representative provides these comments for the Commission's consideration.

Respectfully submitted,

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